IN THE HIGH COURT OF BOMBAY AT GOA
****

APPEAL UNDER ARBITRATION ACT NO. 7 OF 1995

M/s. K. S. Mamadapur
& Bros., P.W.D. Contractor,
'Akshaya', 694/2,
Bhagyanagar, Belgaum. ... Appellants.

Versus

1. Union of India,
represented by the
Executive Engineer, W.D.II,
Irrigation Department,
Fatorda, Margao, Goa, and

2. State of Goa, through
its Chief Secretary,
having its office at
Panaji, Goa. ... Respondents.

Mr. Sudesh Usgaokar, advocate for the appellants.

Mr. H. R. Bharne, advocate for the respondent no.2.

CORAM : S. A. BOBDE, J.

DATE : 6th August, 2004.

ORAL JUDGMENT

This is an appeal under Section 39(1)(vi) of the Arbitration Act, 1940, against the judgment dated 31st December, 1994 of the Civil Judge, Senior Division, Margao, refusing to set aside the Award. A dispute between the appellants and the respondents was referred on 21st August, 1995, to a sole Arbitrator. The order of appointment of the Arbitrator clearly stipulated that the Arbitrator is required to give a reasoned award.

2. The Arbitrator entered into the reference on 2nd September, 1985, and an Award was passed on 29th October,

1988.

3. Dis-satisfied with the Award, the appellants preferred objections under Section 30 of the Arbitration Act. The objections include the fact that the Arbitrator has exceeded his authority and has misconducted himself. The appellants further objected that the Award is contrary to the evidence on record and, in particular, that the Arbitrator has wrongly entertained the counter-claim eventhough there was no demand and refusal dehors the arbitration procedure. The learned Civil Judge, Senior Division, Margao, who dismissed the appellants' objection and made the Award as rule of the Court, has not considered the objections with reference to the Award and the findings therein. The learned Civil Judge has not even gone into whether a particular finding of the Arbitrator was outside his jurisdiction or outside the scope of the reference. The objections have been rejected on a mere general observation that the court cannot review the Award unless an objection to the legality is apparent on the face of it.

4. At one place the learned Civil Judge has observed that the proposition made by the appellants cannot be accepted since "it cannot be disputed that at least there was some evidence before the sole Arbitrator to come to the conclusion". The learned trial Judge has not even cared to specify what evidence is being referred to or the context in

which such an observation is made.

5. Most surprisingly, the learned Civil Judge has, in paragraph 11, which is the penultimate paragraph, observed that the jurisdiction of the Court in interfering with non-speaking awards is very narrow and has gone on to reject the objections. This shows a complete non-application of mind and an erroneous approach to the objections. In fact, the Award is a speaking Award in pursuance of the mandate of the Arbitrator, which requires him to give reasons. There is no reason why the learned Judge should have considered the jurisdiction of the Court in setting aside non-speaking awards.

6. For the reasons stated above, it is clear that the objections have not been considered at all with reference to specific portions of the Award. The learned Civil Judge, Senior Division, Margao, was not entitled to reject the observations in such a cursory manner, without discussing them. I, therefore, allow the appeal and set aside the Judgment dated 31st December, 1994. The matter shall be remanded to the District Court, Margao, for a fresh decision on the objection in accordance with law.

S.A. BOBDE, J.

mc.